

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

USDC SDNY
DOCUMENT
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DATE FILED: 2-7-14

HEATHER SILER and THERESA LEE, individually
and on behalf of all other persons similarly situated who
were employed by LANDRY'S SEAFOOD HOUSE –
NORTH CAROLINA, INC. d/b/a LANDRY'S INC.
d/b/a VIC & ANTHONY'S and/or any other entities
affiliated or controlled by LANDRY'S SEAFOOD
HOUSE – NORTH CAROLINA, INC. d/b/a
LANDRY'S INC. d/b/a VIC & ANTHONY'S,

Plaintiffs,

-against-

LANDRY'S SEAFOOD HOUSE – NORTH
CAROLINA, INC. d/b/a LANDRY'S INC. d/b/a VIC &
ANTHONY'S and/or other entities affiliated or
controlled by LANDRY'S SEAFOOD HOUSE –
NORTH CAROLINA, INC. d/b/a LANDRY'S INC.
d/b/a VIC & ANTHONY'S,

Defendants.

ECF Case

Civil Action No.: 13-CV-0587

**IMPLEMENTING ORDER
PRELIMINARILY APPROVING THE
PROPOSED SETTLEMENT, FOR
CERTIFICATION OF THE
SETTLEMENT CLASS, FOR
APPOINTMENT OF PLAINTIFFS'
COUNSEL AS CLASS COUNSEL, AND
FOR APPROVAL OF PLAINTIFFS'
PROPOSED NOTICE OF SETTLEMENT
AND RELEASE AND CLAIM FORM**

The above-entitled matter came before the Court for Preliminary Approval of Settlement, Certification of the Settlement Class and Appointment of Plaintiffs' Counsel as Class Counsel as to Defendant Landry's Seafood House – North Carolina, Inc., and Approval of Plaintiffs' Proposed Notice of Settlement and Class Action Settlement Procedure and Claim Form.

WHEREAS the Parties jointly represent that the Settlement Agreement and Release is fair and reasonable;

WHEREAS Defendants concede for purposes of this Settlement Agreement that all elements of Fed. R. Civ. Pro. 23 are satisfied;

IT IS HEREBY ORDERED THAT:

1. Based upon the Court's review of the Settlement Agreement and Release, the Court grants preliminary approval of the Settlement memorialized in the Settlement Agreement

and Release (“Settlement Agreement”).

2. The Court concludes that notice to the Class is appropriate.

3. The Court concludes that the Claim Form to the Class is appropriate.

4. The Court finds that the Settlement Agreement is the result of extensive, arm’s length negotiations.

5. The Court provisionally certifies the following class under Federal Rule of Civil Procedure 23(e), for settlement purposes (“Settlement Class”) as:

All present and former persons employed as servers, waiters, runners, bus-persons, bartenders, captains and/or any other customarily tipped employee who worked at Defendant’s Vic & Anthony’s restaurant located at 233 Park Avenue South, New York, New York, at any time from February 1, 2012 to October 16, 2013 and who worked at least one banquet or party event at which a customer paid a service charge and/or gratuity which was retained in whole or in part by Defendant and excluding all administrative, executive, supervisory, office, and managerial positions.

6. The Court appoints Lloyd Ambinder and Kara Miller of Virginia & Ambinder, LLP, 111 Broadway, Suite 1403, New York, New York, 10006 as Class Counsel because Virginia & Ambinder, LLP meet all of the requirements of Federal Rule of Civil Procedure 23(g).

7. Class Counsel did substantial work identifying, investigating, and settling Plaintiffs’ and the class members’ claims.

8. Class Counsel have experience prosecuting and settling employment class actions, including wage and hour class actions and are well-versed in wage and hour law and in class action law. The work that Class Counsel has performed both in litigating and settling this case demonstrates their commitment to the class and to representing the class’s interests.

9. The Court approves the Notice of Proposed Class Action Settlement (“Notice”), and Claim Form and Release (“Claim Form”) attached to the Settlement Agreement as Exhibits

“1” and “2” respectively, and directs its distribution to the Class.

10. The content of the Notice fully complies with due process and Federal Rule of Civil Procedure 23 and adequately puts class members on notice of the proposed settlement.

11. The Court hereby sets the following settlement procedure:

15 days after entry of Implementing Order: <i>DATE: Feb. 21, 2014</i>	Mailing of Class Notice.
30 days after date of mailing of Notice of Proposed Class Action Settlement: <i>DATE: March 24, 2014</i>	Last day for Class Members to “opt out” of the Settlement or to submit written objections to the Settlement.
30 days after date of mailing of Notice of Proposed Class Action Settlement: <i>DATE: March 24, 2014</i>	Last day for Class Members to qualify as a Claimant by filing claim form to join the settlement.
5 days prior to Fairness Hearing <i>DATE: April 25, 2014</i>	Date for parties to file proposed Final Order and letter in support of proposed Final Settlement.
<i>DATE: April 30, 2014</i>	Final Settlement approval hearing (“Fairness Hearing”).

It is so ORDERED this 7th day of February, 2014.



Hon. Ronald L. Ellis, U.S.M.J.